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September 30, 2002

**SENT BY FEDERAL EXPRESS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Re: Joint Motion for Dismissal of Garland FM  
Rulemaking Petition RM-10489, Adoption of  
Henderson Counterproposal, And Approval of  
Settlement Agreement in MB Docket No. 02-177

Dear Ms. Dortch:

Transmitted herewith is an original and four copies of  
the above captioned pleading.

It is requested that the additional copy marked "FILE"  
be date-stamped and returned to us in the enclosed self-  
addressed stamped envelope.

Should any additional information be required, please  
contact this office.

Very truly yours,

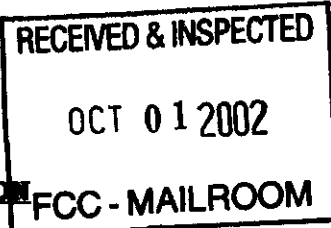
  
Robert J. Buenzle, Counsel for  
Roy E. Henderson

cc of pleading (by fax): John A. Karousos, Assistant Chief  
Audio Division, Broadcast License  
Division, Media Bureau

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ORIGINAL

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.



In the Matter of ) MB Docket No. 02-177  
Amendment of Section 73.202(b) ) RM-10489  
Table of Allotments ) RM-  
FM Broadcast Stations )  
Milano, Bédias, and Caldwell Texas )

To: Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau

**JOINT MOTION FOR DISMISSAL OF GARLAND  
PETITION RM-10489, ADOPTION OF HENDERSON COUNTERPROPOSAL,  
AND APPROVAL OF SETTLEMENT AGREEMENT**

Roy E. Henderson (hereinafter "Henderson"), and David P. Garland (hereinafter "Garland"), pursuant to Section 1.420 of the Commission's Rules hereby jointly file the attached Settlement Agreement proposing the dismissal with prejudice of the Garland petition RM-10489 and adoption of the Henderson Counterproposal as filed August 26, 2002. In support whereof, the following is submitted:

In its Petition, Garland requested the new allotment of channel 274A to the community of Milano, Texas. In response to Garland's Petition a Notice of proposed Rulemaking was issued on July 5, 2002 establishing MB Docket No. 02-177, and on August 26, 2002, Henderson filed his Counterproposal requesting the removal of channel 297A from Caldwell, Texas, (where it is currently operating as Henderson's KLTR-FM) to upgrade as channel 297C3 in the community of Bédias, Texas, with KLTR's license modified to

a fully equivalent replacement service on channel 274A in Caldwell, while at the same time conserving Commission resources in further evaluation and prosecution of mutually exclusive proposals. It is also noted that use of channel 297 as a "C3" rather than its existing "A" status would be a more efficient and useful service on that channel provided to the citizens of Texas.

Wherefore it is respectfully requested that the Commission approve the attached Settlement Agreement, dismiss the Garland Rulemaking Petition, and adopt the Henderson Counterproposal.


Respectfully submitted,

DAVID P. GARLAND

By:   
David P. Garland

David P. Garland  
1110 Hackney Street  
Houston, Texas 77023  
713 921-9603

ROY E. HENDERSON

By:   
Robert J. Buenzle

His Counsel

Law Offices  
Robert J. Buenzle  
11710 Plaza America Drive  
Suite 2000  
Reston, Virginia 20190  
(703) 430-6751

October 1, 2002

## **SETTLEMENT AGREEMENT**

**THIS SETTLEMENT AGREEMENT** ("**Agreement**") is entered into this 27th day of September, 2002, by and between Roy E. Henderson ("Henderson") and David P. Garland ("Garland") or, collectively, as the "**Parties**").

### **WITNESSETH:**

**WHEREAS**, Garland has pending before the Federal Communications Commission ("**FCC**") a Petition for Rulemaking (RM- 10489) in Media Docket 02-177, proposing a change in the FM Allocations Table to add new channel 274A to the community of Milano, Texas; and

**WHEREAS**, Henderson has pending a mutually exclusive Counterproposal Petition for Rulemaking in Media Docket 02-177 proposing new FM allocations in the communities of Caldwell (channel 274A) and Bedias (channel 297C3), Texas ; and

**WHEREAS**, the Garland has concluded that the public interest would be best served by adoption of the Henderson Counterproposal, and Henderson has agreed to reimburse to Garland all of Garland's legitimate and prudent expenses incurred in the preparation and prosecution of Garland's Petition; and

**WHEREAS**, the Parties believe that a settlement upon the terms set forth in this Agreement will serve the public interest in that it will simplify the pending rulemaking process in Media Docket 02-177, thereby expediting the inauguration of new and upgraded FM radio service in the State of Texas;

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements, conditions, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. **Dismissal of Petition.** As soon as possible, but in no event later than ten days after execution of this Agreement, the Agreement shall be filed with the FCC including Garland's request that the FCC dismiss its Petition with prejudice. The filing shall also include a Motion for Approval of the Agreement, executed by both parties, or their counsel, along with a Declaration by Garland listing Garland's legitimate and prudent expenses as expended in Garland's preparation, application and prosecution of its Petition for Rulemaking, and a Declaration of Roy E. Henderson compliant with Section 1.420 of the Commission's Rules.

2. **Consideration.** In consideration of Garland's dismissal of its Application, and the Commission's adoption of Henderson's Counterproposal, Henderson agrees to pay to Garland, and Garland agrees to accept, the sum of Eight Thousand Eight Hundred Dollars (\$8,800.00) or such lesser sum as the Commission may approve pursuant to Section 1.420 of the Commission's Rules.

3. **Request for FCC Consent.** As soon as possible, but in no event later than ten days after execution of this Agreement, the Parties hereto shall file a Joint Motion for Dismissal of Garland's Petition, Adoption of Henderson's Counterproposal, and Approval of Settlement Agreement (the "**Joint Motion**") in the form of **Exhibit B** hereto, as required by Section 1.420 of

the FCC's rules, requesting that the FCC issue an order or orders: (i) granting the Joint Request; (ii) approving this Agreement; (iii) dismissing Garland's Petition with prejudice; and (iv) adopting the Henderson Counterproposal. The Parties shall in good faith pursue approval by the FCC of this Joint Request and shall cooperate fully with each other and with the FCC and take whatever additional action is necessary or appropriate to obtain FCC approval of, and to effectuate, this Agreement. Neither Party shall take any action adverse to this Agreement or the Joint Request, and Garland shall take no action adverse to the adoption of Henderson's Counterproposal.

4. **Final Action.** The obligations of the Parties under this Agreement are expressly conditioned upon the FCC taking "Final Action" approving this Agreement in its entirety, dismissing Garland's Petition with prejudice, and adopting Henderson's Counterproposal. For purposes of this Agreement, an action by the FCC approving this Agreement, dismissing Garland's Petition with prejudice, and adopting Henderson's Counterproposal shall be a "Final Action" when the time for filing any requests for administrative or judicial review of such action, or for the FCC to reconsider such action on its own motion, has lapsed without any such filing or motion having been filed or, in the event of any such filing or motion, it shall have been disposed of in a manner so as not to affect the validity of the action taken and the time for seeking further administrative or judicial review with respect to the action shall have expired without any request for such further review having been filed.

5. **Authorization and Binding Obligation.** The Parties hereto represent to one another that they each have the power and authority to enter into and carry out this Agreement and that this Agreement constitutes a valid and binding obligation of each of them in accordance with its terms.

6. **Notices.** All notices, requests, demands and other communications relating to this Agreement shall be in writing and shall be sent by first class, certified or registered mail, return receipt requested, postage prepaid and, pending the designation of another address, addressed as follows:

**If to Garland:**

David P. Garland  
1110 Hackney  
Houston, Texas 77023

**If to Henderson:**

Roy E. Henderson  
1110 West William Cannon Drive  
Suite 402  
Austin, Texas 78745-5460

With a copy (which shall not constitute notice) to:

Robert J. Buenzle, Esq.  
Law Offices of Robert J. Buenzle  
11710 Plaza America Drive, Suite 2000

Reston, Virginia 20190

7. **Entire Agreement.** Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

8. **Enforcement.** Should the Parties engage in litigation arising out of this Agreement, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and costs as shall be determined by the court. The Parties recognize that this Agreement confers a unique benefit, the loss of which cannot be compensated for through monetary damages. Thus, in the event of a breach of this Agreement, the Parties acknowledge that specific performance or other equitable relief would be an appropriate remedy, and agree to waive any defense that there is an adequate remedy at law for breach of this Agreement.

9. **Assignment and Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties hereto and their heirs, successors, executors, legal representatives and assigns, provided however that neither Party may voluntarily assign this Agreement without the express written consent of the other Party.

10. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without application of conflicts of laws principles. The Parties agree to accept the jurisdiction of the courts of the State of Texas for the resolution of any disputes under this Agreement.

11. **Headings.** The headings herein are included for ease of reference only and shall not control or affect the meaning or construction of the provisions of this Agreement.

12. **Counterparts.** This Agreement may be executed in one or more counterparts and shall be binding when it has been executed by each of the Parties.

**IN WITNESS WHEREOF,** the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

**DAVID P. GARLAND**

By:   
David P. Garland

**ROY E. HENDERSON**

By: \_\_\_\_\_  
Roy E. Henderson

Reston, Virginia 20190

7. **~~Entire Agreement.~~** Except as otherwise set forth herein, this Agreement constitutes the entire understanding of the Parties, and no other consideration, action or forbearance is contemplated or relied upon by them. This Agreement may not be amended or modified except by a writing signed by both Parties.

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IN WITNESS WHEREOF, the Parties have executed this Agreement or have caused this Agreement to be executed on their behalf to be effective as of the date first set forth above.

DAVID P. GARLAND

By: \_\_\_\_\_  
David P. Garland

ROY E. HENDERSON

By:   
Roy E. Henderson

## DECLARATION

DAVID P. GARLAND ("Garland"), under penalty of perjury hereby states and declares as follows:

Garland filed a Petition for Rulemaking on April 8, 2002, requesting amendment of the FM Radio Allocation Table to add channel 274A to Milano, Texas, adding also that, if so allocated, that Garland would apply for and build a new radio station on that allocation; and

By Notice of Proposed Rulemaking, the proposal was assigned file number RM-10489 and a Notice of Proposed Rulemaking was issued on July 5, 2002 assigning MB Docket No. 02-177 to receive comments on the proposal. In response to that Notice, a mutually exclusive Counterproposal was filed by Roy E. Henderson proposing allotment of channel 274A to Caldwell, Texas, and 297C3 to Bediaa, Texas; and

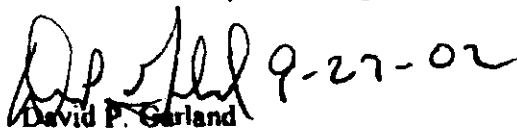
Upon reflection, Garland is convinced that the public interest would be better served by the additional service proposed for the communities of Bediaa and Caldwell as set forth in the Counterproposal and has therefore agreed to move to dismiss the Garland proposal in return for reimbursement of expenses legitimately and prudently expended by Garland in furtherance of its proposal; and

Garland further states and affirms here that the Garland rulemaking petition was filed in good faith, not for the purposes of reaching or carrying out any settlement, and that it is Garland's belief that the public interest would be served by simplifying the rulemaking process and hastening the advent of new service in the communities of Bediaa and Caldwell ; and

Garland sets forth herewith below his expenses legitimately and prudently expended in the preparation and filing of the Garland rulemaking petition RM-10489 for Milano, Texas:

FM Software	\$4,500.00
Terrain Database	\$ 650.00
Software Updates	<u>\$3,650.00</u>
TOTAL	\$8,800.00

The above-stated facts are true and correct to the best of my knowledge and belief.

  
David P. Garland  
1110 Hackney  
Houston, Texas 77023

September 17, 2002



CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Joint Motion for Dismissal of Garland Petition RM-10489, Adoption of Henderson Counterproposal, and Approval of Settlement Agreement have been served by United States mail, postage prepaid this 1st day of October, 2002, upon the following:

\*John A. Karousos, Esq.  
Assistant Chief, Audio Division  
Office of Broadcast License Policy  
Media Bureau  
Federal Communications Commission  
Portals II, Room 3-A266  
445 12th Street SW  
Washington, D.C. 20554

Maurice Salsa  
5615 Evergreen Valley Drive  
Kingwood, Texas 77345



Robert J. Buenzle

\* Sent By Fax